

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00258-EJD
)
PLAINTIFF,)
) SAN JOSE, CALIFORNIA
VS.)
) APRIL 15, 2020
ELIZABETH A. HOLMES,)
) PAGES 1 - 34
DEFENDANT.)
_____)

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S (TELEPHONICALLY):

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
VANESSA BAEHR-JONES
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S (TELEPHONICALLY): (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP
BY: KEVIN M. DOWNEY
LANCE A. WADE
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE
BY: JOHN D. CLINE
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

1 SAN JOSE, CALIFORNIA

APRIL 15, 2020

2 P R O C E E D I N G S

10:17AM 3 (COURT CONVENED AT 10:17 A.M.)

10:17AM 4 THE COURT: ALL RIGHT. THANK YOU.

10:17AM 5 WELL, LET'S CALL THE CASE OF 18-258, THIS IS UNITED STATES
10:17AM 6 OF AMERICA VERSUS ELIZABETH HOLMES. LET ME STATE AT THE OUTSET
10:17AM 7 THAT WE ARE CONDUCTING THIS HEARING BY WAY OF TELEPHONIC
10:17AM 8 HEARING.

10:17AM 9 THE COURT REFERS THE PARTIES TO GENERAL ORDER 74 FROM OUR
10:18AM 10 CHIEF JUDGE PHYLLIS HAMILTON, AND WE RECOGNIZE BECAUSE OF THE
10:18AM 11 CURRENT COVID-19 CRISIS, HEARINGS CURRENTLY CANNOT BE CONDUCTED
10:18AM 12 IN PERSON WITHOUT SERIOUSLY JEOPARDIZING PUBLIC HEALTH AND
10:18AM 13 SAFETY.

10:18AM 14 THE SAN JOSE COURTHOUSE WHERE THIS CASE IS VENUED IS
10:18AM 15 CLOSED AND WILL BE CLOSED CURRENTLY TO MAY 1, AND THAT IS
10:18AM 16 SUBJECT TO REVIEW, OF COURSE. BUT THE COURTHOUSE IS CURRENTLY
10:18AM 17 CLOSED, AND WE ARE CONDUCTING THIS HEARING OTHERWISE
10:18AM 18 TELEPHONICALLY.

10:18AM 19 I'M GOING TO CALL FOR THE APPEARANCES OF THE PARTIES IN
10:18AM 20 JUST A MOMENT. BUT LET ME ASK, WE ARE ON A TELEPHONIC HEARING.
10:18AM 21 I'M GOING TO ASK ALL PARTIES WHO ARE NOT SPEAKING TO PLEASE
10:18AM 22 MUTE YOUR PHONES, PLEASE MUTE YOUR PHONES, AND YOU CAN UNMUTE
10:18AM 23 THEM, OF COURSE, WHEN YOU'RE CALLED UPON TO SPEAK OR WHEN YOU
10:18AM 24 ARE SPEAKING, BUT I WOULD OTHERWISE APPRECIATE THAT.

10:19AM 25 LET'S START THEN WITH THE GOVERNMENT. IF I COULD CAPTURE

10:19AM 1 THE APPEARANCES FOR THE GOVERNMENT, PLEASE.

10:19AM 2 MR. LEACH: GOOD MORNING, YOUR HONOR. THANK YOU.

10:19AM 3 THIS IS ROBERT LEACH ON BEHALF OF THE UNITED STATES AND
10:19AM 4 ALSO ON THE LINE ARE MY COLLEAGUES JEFF SCHENK, JOHN BOSTIC,
10:19AM 5 AND VANESSA BAEHR-JONES.

10:19AM 6 THE COURT: THANK YOU. GOOD MORNING.

10:19AM 7 LET ME TURN TO THE DEFENSE.

10:19AM 8 MR. WADE: GOOD MORNING, YOUR HONOR.

10:19AM 9 IT'S LANCE WADE ON BEHALF OF MS. HOLMES. WITH ME THIS
10:19AM 10 MORNING ARE KEVIN DOWNEY AND JOHN CLINE.

10:19AM 11 MS. HOLMES IS ALSO PRESENT ON THE LINE.

10:19AM 12 THE COURT: ALL RIGHT. MS. HOLMES, ARE YOU THERE?

10:19AM 13 THE DEFENDANT: YES. GOOD MORNING, YOUR HONOR.

10:19AM 14 THE COURT: THANK YOU. GOOD MORNING.

10:19AM 15 AND, MR. WADE, DO YOU RECOGNIZE THAT VOICE AS THAT OF YOUR
10:19AM 16 CLIENT?

10:19AM 17 MR. WADE: I DO, YOUR HONOR.

10:20AM 18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:20AM 19 LET ME ALSO ADD A CAVEAT HERE, MR. WADE. I DON'T KNOW IF
10:20AM 20 YOU HAVE ENGAGED PROTOCOLS SUCH THAT DURING THIS PROCEEDING IF
10:20AM 21 YOUR CLIENT WISHES TO SPEAK WITH YOU PRIVATELY, SHE MAY DO
10:20AM 22 THAT. I NEGLECTED TO MENTION THAT AT OUR LAST HEARING, BUT I
10:20AM 23 WANT TO ENSURE THAT MS. HOLMES HAS THE OPPORTUNITY TO SPEAK
10:20AM 24 WITH HER DEFENSE COUNSEL DURING THESE PROCEEDINGS.

10:20AM 25 MY SENSE IS THAT SHE IS NOT SITTING NEXT TO YOU OR DOESN'T

10:20AM 1 HAVE PROXIMITY NEXT TO YOU PHYSICALLY OR YOUR DEFENSE TEAM.

10:20AM 2 MR. WADE: THANK YOU, YOUR HONOR. THAT IS CORRECT.

10:20AM 3 WE ARE NOT -- NONE OF US ARE IN CLOSE PROXIMITY TO ONE ANOTHER.

10:20AM 4 I APPRECIATE THE COMMENTS OF THE COURT.

10:20AM 5 AS THE COURT KNOWS, MS. HOLMES'S APPEARANCE WAS WAIVED IN
10:20AM 6 THE PRIOR HEARING SO I DON'T BELIEVE THAT WAS AN ISSUE NECESSARY
10:20AM 7 TO ADDRESS THEN.

10:21AM 8 FOR PURPOSES OF THIS HEARING, IF WE FIND A TIME WHERE WE
10:21AM 9 BELIEVE WE NEED TO COMMUNICATE WITH HER SEPARATELY, WE'LL NOTE
10:21AM 10 THAT FOR THE COURT AND MAYBE SEEK THE COURT'S INDULGENCE
10:21AM 11 BRIEFLY SO WE CAN DO THAT VIA A SEPARATE LINE OF COMMUNICATION.

10:21AM 12 BUT MY HOPE IS THAT WON'T BE NECESSARY THIS MORNING.

10:21AM 13 THE COURT: ALL RIGHT. THANK YOU.

10:21AM 14 BUT I DO WANT YOU TO KNOW THAT I, OF COURSE, WILL AVAIL
10:21AM 15 MYSELF AND YOU OF THE OPPORTUNITY TO SPEAK WITH YOUR CLIENT.
10:21AM 16 WE'LL DO WHAT WE NEED TO DO TO ACCOMPLISH THAT. I KNOW YOU
10:21AM 17 HAVE OTHER COUNSEL THERE. PERHAPS -- I DON'T KNOW HOW MANY
10:21AM 18 PHONES MS. HOLMES HAS, BUT PERHAPS YOU CAN TEXT ONE ANOTHER OR
10:21AM 19 SOMETHING.

10:21AM 20 IF YOU NEED TO TAKE A BREAK, JUST LET ME KNOW, AND WE'LL
10:21AM 21 OF COURSE STOP THE PROCEEDINGS AND ALLOW YOU TO CONFER
10:21AM 22 PRIVATELY OFF THE RECORD WITH YOUR CLIENT.

10:21AM 23 MR. WADE: THANK YOU, YOUR HONOR.

10:21AM 24 THE COURT: YOU'RE WELCOME. ALL RIGHT.

10:21AM 25 LET ME -- ANYTHING FURTHER? ANYTHING ANYONE WISHES TO SAY

10:21AM 1
10:21AM 2
10:21AM 3
10:22AM 4
10:22AM 5
10:22AM 6
10:22AM 7
10:22AM 8
10:22AM 9
10:22AM 10
10:22AM 11
10:22AM 12
10:22AM 13
10:22AM 14
10:22AM 15
10:22AM 16
10:22AM 17
10:22AM 18
10:22AM 19
10:22AM 20
10:23AM 21
10:23AM 22
10:23AM 23
10:23AM 24
10:23AM 25

BEFORE WE PROCEED?

ANYTHING FROM THE GOVERNMENT?

ANYTHING FROM, MR. WADE, YOUR TEAM?

MR. LEACH: NO, YOUR HONOR. THIS IS ROBERT LEACH
FOR THE UNITED STATES. THANK YOU. NOTHING FOR THE GOVERNMENT.

MR. WADE: THIS IS LANCE WADE, YOUR HONOR. NOTHING
FROM US.

THE COURT: ALL RIGHT. THANK YOU.

LET ME THANK YOU FOR FILING DOCUMENT 372, WHICH IS YOUR
JOINT STATUS MEMORANDUM, AND I APPRECIATE YOUR DILIGENCE IN
WORKING TOGETHER AND GETTING THAT FILED IN THE SHORT NOTICE
THAT THE COURT GAVE YOU. IT'S VERY HELPFUL.

WE HAVE -- OF COURSE, WE'RE LOOKING FORWARD TO THE TRIAL
OF THIS MATTER, AND WE'RE DOING THIS UNDER THE UMBRELLA OF THE
CURRENT COVID PROCESS THAT CONTINUES TO POSSESS THE NATION, AND
WE'RE TRYING OUR BEST TO ACCOMMODATE ALL MATTERS IN OUR COURTS
WITH AN EYE TOWARD MAKING SURE THAT BOTH SIDES, EVERYONE HAS
FAIR ACCESS TO THE COURTS AND A FAIR HEARING IN THE COURTS.

I HAVE YOUR SCHEDULES HERE, AND I APPRECIATE OFFERING THE
SCHEDULES. I THINK WHAT REALLY WE NEED TO LOOK AT, AND I ENDED
OUR LAST CONVERSATION WITH THIS, WHAT IS THE REALISTIC SCHEDULE
FOR A TRIAL IN THIS MATTER?

I APPRECIATE BOTH SIDE'S EFFORTS TO AT LEAST PRESS FORWARD
TO SEE IF WE CAN HAVE THE CASE PRESENTED TO A JURY THIS YEAR.
AND AS I LOOK AT YOUR DOCUMENTS, YOU SUGGEST THAT -- BOTH SIDES

10:23AM 1 SUGGEST OCTOBER TRIAL DATES.

10:23AM 2 MS. HOLMES, THE DEFENSE SUGGESTS AN OCTOBER 26TH DATE.
10:23AM 3 THE GOVERNMENT DATE IS, PROPOSED DATE IS ABOUT 20 DAYS BEFORE
10:23AM 4 THAT, OCTOBER 6TH.

10:23AM 5 I ALSO APPRECIATE THE FACT THAT YOU RECOGNIZE THAT WE
10:23AM 6 SHOULD HAVE AN INTERIM STATUS HEARING, WHICH I THINK IS WISE.
10:23AM 7 YOU SUGGEST A DATE IN JULY FOR THAT. I THINK ALL OF THAT IS
10:23AM 8 APPROPRIATE.

10:24AM 9 NOW, I DO NOTE IN THE DOCUMENT IT IS SUGGESTED THAT THE
10:24AM 10 GOVERNMENT MAY SEEK, MAY SEEK A SUPERSEDING INDICTMENT FROM THE
10:24AM 11 GRAND JURY. AS NOTED, THE GRAND JURY IS IN SUSPENSION RIGHT
10:24AM 12 NOW AND THEY'RE NOT ABLE TO PROCEED BECAUSE OF THE CLOSURE OF
10:24AM 13 OUR COURTHOUSE UNTIL MAY 1ST. AND SO THAT REMAINS TO BE SEEN.
10:24AM 14 THAT REMAINS TO BE SEEN WHETHER OR NOT A GRAND JURY WOULD
10:24AM 15 INDEED ISSUE A SUPERSEDING INDICTMENT. I THINK MR. WADE NOTES
10:24AM 16 THAT IN HIS PLEADINGS AS WELL.

10:24AM 17 SO I WANTED TO ASK BOTH SIDES, PLEASE, TO COMMENT ON THE
10:24AM 18 OCTOBER TRIAL DATE AS IT'S SET AND THE REALITIES OF THAT GIVEN
10:24AM 19 THE FACT THAT THE GOVERNMENT MAY SUPERSEDE, AS WELL AS LOOKING
10:24AM 20 FORWARD INTO 2021 FOR A TRIAL DATE IN EARLY 2021. I KNOW THE
10:25AM 21 DEFENSE SUGGESTS THAT THAT IS A MORE REALISTIC DATE GIVEN NOT
10:25AM 22 JUST THE COVID SITUATION BUT THE FACT THAT THERE MIGHT BE A
10:25AM 23 SUPERSEDING INDICTMENT FILED.

10:25AM 24 MR. LEACH, YOUR TEAM WAS VERY THOROUGH IN YOUR SIDE OF
10:25AM 25 THE -- YOUR PORTION OF DOCUMENT 372, THE JOINT MEMORANDA, BUT I

10:25AM 1 DID WANT TO GIVE YOU AN OPPORTUNITY TO SPEAK FURTHER ON THAT.
10:25AM 2 SO WHAT ARE YOUR THOUGHTS ON THIS?

10:25AM 3 MR. LEACH: THANK YOU, YOUR HONOR. I APPRECIATE
10:25AM 4 THAT. THIS IS ROBERT LEACH.

10:25AM 5 WE BELIEVE AN OCTOBER DATE IS REALISTIC REGARDLESS OF
10:25AM 6 WHETHER THE CURRENT CHARGING INSTRUMENT IS SUPERSEDED.

10:25AM 7 I WOULD NOTE THAT IT'S APRIL 15TH. WE ARE --

10:25AM 8 THE COURT: YOU KNOW, LET'S -- MR. LEACH, WE'VE
10:26AM 9 PAUSED FOR A MOMENT BECAUSE THE AT&T LINE THAT WE HAVE,
10:26AM 10 REGRETTABLY, IT DOES INDICATE WHEN PEOPLE SIGN ON AND OFF, AND
10:26AM 11 WE'RE TREATED TO A LOVELY LULLABY OF BEATS.

10:26AM 12 WE'RE TRYING TO LOOK AT OTHER TECHNOLOGY THAT PERMITS US
10:26AM 13 TO ELIMINATE THAT, BUT REGRETTABLY, WE DON'T HAVE IT IN PLACE
10:26AM 14 FOR THIS HEARING. I APOLOGIZE FOR THAT.

10:26AM 15 MR. LEACH: THANK YOU, YOUR HONOR.

10:26AM 16 I AM GOING TO CHOOSE TO HOPE THAT PEOPLE WERE JOINING THE
10:26AM 17 LINE RATHER THAN LEAVING THE LINE WHEN I WAS SPEAKING.

10:26AM 18 AS I WAS SAYING, IT'S APRIL 15TH TODAY. WE ARE SIX MONTHS
10:26AM 19 AWAY FROM OCTOBER. I DON'T THINK IT'S UNUSUAL FOR THE
10:26AM 20 GOVERNMENT TO SUPERSEDE A CHARGING INSTRUMENT, AND, OF COURSE,
10:26AM 21 THAT'S A DECISION THAT IS RESERVED FOR THE GOVERNMENT.

10:26AM 22 IN MOST CASES WHEN THE GOVERNMENT DOES THAT, THE FIRST
10:27AM 23 TIME THAT THE DEFENSE LEARNS ABOUT IT IS WHEN THE GRAND JURY
10:27AM 24 ELECTS TO RETURN THE INDICTMENT.

10:27AM 25 GIVEN THE COVID SITUATION, WE WANTED TO AVOID THAT, WHICH

10:27AM 1 IS WHY WE PROPOSED PROCEEDING BY SUPERSEDING INFORMATION AND
10:27AM 2 PROVIDING THE DRAFT SUPERSEDING INFORMATION TO THE DEFENSE SO
10:27AM 3 THE DEFENSE HAD AT LEAST THE GOVERNMENT'S PERSPECTIVE OF WHAT
10:27AM 4 IT INTENDED TO DO.

10:27AM 5 I WOULD NOTE THAT THE DEFENDANTS MOVED TO DISMISS THE
10:27AM 6 INDICTMENTS IN DECEMBER OF 2019. THEY COULD HAVE MOVED TO DO
10:27AM 7 THAT EARLIER AND ELECTED NOT TO DO THAT.

10:27AM 8 THE COURT RULED ON THE MOTION TO DISMISS IN LATE FEBRUARY,
10:27AM 9 AND I DON'T THINK IT IS UNREASONABLE OR CAN COME AS A SURPRISE
10:27AM 10 TO ANYBODY THAT THE GOVERNMENT MIGHT REACT TO THE DISMISSAL OF
10:27AM 11 CERTAIN COUNTS.

10:27AM 12 SO I THINK THAT ADDRESSES A LITTLE BIT OF WHY I DON'T
10:28AM 13 THINK ANY SUPERSEDING INSTRUMENT SHOULD COME AS A SURPRISE.

10:28AM 14 I ALSO THINK IT'S A BIT OF AN OVERSTATEMENT TO SAY THAT
10:28AM 15 THE PROPOSED CHANGES THE GOVERNMENT IS PURSUING REALLY CHANGE
10:28AM 16 THE TRIAL IN THIS CASE OR REALLY CHANGE THE PERSPECTIVE ON THE
10:28AM 17 CASE.

10:28AM 18 I DO NOT ANTICIPATE ANY NEW SUBSTANTIAL DISCOVERY. I
10:28AM 19 THINK WHATEVER DISCOVERY THE GOVERNMENT PRODUCED, I THINK WE
10:28AM 20 HAVE ALREADY PRODUCED THE VAST BULK OF IT AND THE REMAINDER
10:28AM 21 WOULD BE QUITE NEGLIGIBLE.

10:28AM 22 I KNOW IN THE STATUS CONFERENCE STATEMENT THE DEFENSE
10:28AM 23 MENTIONS WALGREENS. WALGREENS HAS BEEN IN THE INDICTMENT SINCE
10:28AM 24 DAY ONE. THEY MENTION SAFEWAY AND DOCUMENTS RELATING TO
10:28AM 25 SAFEWAY HAVE BEEN IN DISCOVERY SINCE THE GOVERNMENT'S INITIAL

10:28AM 1 PRODUCTION. THEY MENTIONED THE ADDITIONAL BOARD MEMBERS AS
10:29AM 2 INVESTORS, AND THAT ALSO HAS BEEN IN DISCOVERY SINCE THE
10:29AM 3 INITIAL PRODUCTION.

10:29AM 4 I WOULD NOTE THAT MANY OF THE MATTERS THAT THE GOVERNMENT
10:29AM 5 IS PURSUING WAS IN OUR RULE 404(B) NOTICE, WHICH WE'VE BEEN
10:29AM 6 PROVIDING SINCE THE OUTSET BUT SUMMARIZED ON MARCH 6TH, 2020.

10:29AM 7 SO WE WANT THE DEFENSE TO BE PREPARED. WE DON'T WANT THE
10:29AM 8 DATE TO MOVE. I JUST DON'T THINK CHANGES IN THE CHARGING
10:29AM 9 INSTRUMENT ARE ANY IMPEDIMENTS TO PROCEEDING IN OCTOBER.

10:29AM 10 AND I THINK IT'S IMPORTANT TO HIGHLIGHT THE CHANGES THAT
10:29AM 11 THE GOVERNMENT PROVIDED TO MS. HOLMES. I THINK IT'S LIMITED TO
10:29AM 12 EIGHT PARAGRAPHS OF THE INDICTMENT. WE ADD A SINGLE LINE IN
10:29AM 13 PARAGRAPH 3 THAT SAYS "THERANOS INVESTORS INCLUDED INDIVIDUALS,
10:29AM 14 ENTITIES, CERTAIN BUSINESS PARTNERS, MEMBERS OF ITS BOARD OF
10:30AM 15 DIRECTORS, AND INDIVIDUALS AND ENTITIES WHO INVESTED THROUGH
10:30AM 16 FIRMS FORMED FOR THE EXCLUSIVE PURPOSE OR PRIMARY PURPOSE OF
10:30AM 17 INVESTING IN THERANOS'S SECURITIES."

10:30AM 18 WE THINK THESE WERE INVESTORS WHO WERE ALREADY IN THE CASE
10:30AM 19 AND THAT THIS DOES NOT SUBSTANTIALLY CHANGE THE DYNAMIC OF A
10:30AM 20 TRIAL.

10:30AM 21 THE OTHER CHANGES ARE TO PARAGRAPHS 10, 11, AND 12, AND IT
10:30AM 22 SIMPLY IS CHANGING A DATE FROM 2010 TO 2013.

10:30AM 23 WE AMEND PARAGRAPH 16 TO MAKE A FURTHER ALLEGATION AND TO
10:30AM 24 IDENTIFY CERTAIN BLOOD TESTS THAT ARE SPELLED OUT IN THE BILL
10:30AM 25 OF PARTICULARS.

1 AND WE CHANGE TWO WIRE FRAUD COUNTS IN PARAGRAPHS 18 AND
2 26 FROM PATIENTS 1 AND 2 TO BB AND ET.

3 THAT'S THE EXTENT OF THE CHANGES THAT THE GOVERNMENT IS
4 PURSUING, AND WE DON'T THINK IT ALTERS THE LENGTH OF THE TRIAL
5 OR REALLY CHANGES THE DYNAMIC THAT WE'RE LOOKING AT.

6 WITH RESPECT TO COVID-19, YOUR HONOR, I DON'T HAVE SPECIAL
7 INSIGHT INTO WHAT THE WORLD IS GOING TO LOOK LIKE IN OCTOBER.
8 WE HEARD THE COURT'S COMMENTS AT THE LAST CONFERENCE ABOUT THE
9 DIFFICULTY OF SERVING SUMMONS AND LARGE GATHERINGS. WE'RE
10 MINDFUL OF THAT.

11 WE THINK OCTOBER SEEMS FAR ENOUGH REMOVED FROM THAT AND
12 THAT THE BETTER COURSE IS TO PLAN FOR THAT AND CHECK IN IN JULY
13 IF WE NEED TO, BUT PLANNING FOR 2021 JUST SEEMS LIKE WE'RE
14 PLANNING FOR FAILURE, AND I THINK THE BETTER COURSE IS TO SET
15 THE DATE, WORK TOWARDS THAT, AND IF AGAINST ALL OF OUR HOPES
16 THE WORLD IS NOT IN A DIFFERENT SITUATION IN OCTOBER, WE CAN
17 REACT TO THAT.

18 BUT SETTING THE DATE OUT IN '21 JUST CREATES TOO MUCH
19 UNCERTAINTY AND IS REALLY PLANNING FOR FAILURE.

20 SO FOR THESE REASONS WE THINK OCTOBER IS REASONABLE, AND
21 WE THINK THE COURT SHOULD ORDER THAT DATE.

22 THE COURT: ALL RIGHT. THANK YOU.

23 LET ME ASK IN REGARDS TO THE POTENTIAL SUPERSEDING
24 DOCUMENT, IF THE GRAND JURY DOES RETURN THE COUNTS AND THE
25 CHANGES THAT YOU'RE SEEKING, DO YOU HAVE A THOUGHT AS TO AN

1 INCREASE IN WITNESSES, PRODUCTION OF DOCUMENTS, ET CETERA, HOW
2 THAT MIGHT AFFECT THINGS?

3 MR. LEACH: IT CERTAINLY DOES NOT CHANGE FROM THE
4 GOVERNMENT'S PERSPECTIVE WHO WE WERE INTENDING TO CALL IN THE
5 TRIAL. I THINK THE TRIAL STAYS THE SAME LENGTH.

6 I THINK THERE ARE GOING TO BE WALGREENS, SAFEWAY AND BOARD
7 OF DIRECTORS WITNESSES IN THIS TRIAL REGARDLESS, SO I DON'T
8 THINK IT CHANGED THE WITNESSES.

9 AND AS I ALLUDED TO EARLIER, YOUR HONOR, WITH THE
10 EXCEPTION OF POSSIBLY 302'S OR WITNESS STATEMENTS, I DO NOT
11 ANTICIPATE ANY SUBSTANTIAL DISCOVERY, CERTAINLY NOTHING
12 COMPARED TO THE 20 MILLION-PLUS DOCUMENTS THAT HAVE ALREADY
13 BEEN PRODUCED IN THIS CASE. I THINK ANY REMAINING DISCOVERY
14 WOULD BE VERY, VERY NEGLIGIBLE.

15 THE COURT: OKAY. THANK YOU VERY MUCH. ANYTHING
16 FURTHER THEN?

17 MR. LEACH: NO, YOUR HONOR. THANK YOU.

18 THE COURT: OKAY. MR. WADE.

19 MR. WADE: THANK YOU, YOUR HONOR. THIS IS
20 LANCE WADE ON BEHALF OF MS. HOLMES.

21 I WILL START WHERE THE COURT HAS AND AS THE COURT DIRECTED
22 IN THE PRIOR HEARING WITH THE CURRENT HEALTH DIRECTIVES AND
23 SOME OF OUR THINKING ON THAT AS THE COURT MADE THAT INQUIRY.
24 AND WE, OF COURSE, THANK THE COURT FOR ITS CARE AND CONCERN
25 ABOUT THESE ISSUES AND OF COURSE ITS THE DESIRE TO KEEP ALL

1 TRIAL PARTICIPANTS SAFE THROUGH THIS ENTIRE PROCESS.

2 WE'RE OBVIOUSLY IN UNCHARTERED TERRITORY HERE, YOUR HONOR,
3 BOTH IN OUR DAILY LIVES AND IN OUR CURRENT OCCUPATIONS AND THIS
4 HEARING.

5 I THINK NONE OF US, INCLUDING SOME OF THE LEADING PUBLIC
6 HEALTH EXPERTS, REALLY KNOW WITH ANY DEGREE OF CERTAINTY WHAT
7 THE SECOND HALF OF THIS YEAR WILL LOOK LIKE FROM A HEALTH
8 PERSPECTIVE.

9 NO ONE HAS A CLEAR IDEA OF WHAT CONDUCT WILL BE DEEMED
10 SAFE DURING THAT TIME PERIOD OR WHAT PUBLIC HEALTH AND SOCIAL
11 DISTANCING GUIDANCE MAY BE NEEDED.

12 BY EXTENSION, OF COURSE, IT MAKES IT VERY DIFFICULT FOR
13 US, AND I'M SURE FOR THE COURT, TO KNOW WHETHER THOSE
14 CONDITIONS WILL BE CONDUCIVE TO A LENGTHY JURY TRIAL SUCH AS
15 THE ONE CONTEMPLATED IN THIS MATTER.

16 WHILE THE PARTIES ARE, OF COURSE, YOU KNOW, IN COURT WITH
17 GREAT FREQUENCY, THE COURT IS VASTLY MORE EXPERIENCED IN
18 CONDUCTING ITS OWN PROCEDURES AND RECOGNIZES THE NUMBER OF
19 CHANGES TO COURTROOM PROCEDURES AND PROTOCOLS THAT WILL BE
20 NECESSARY TO TRY AND ADDRESS HEALTH RELATED ISSUES.

21 WE'RE CONFIDENT THAT THE COURT WILL DO THAT AND OF COURSE
22 STAND PREPARED TO ASSIST THE COURT IN ANY WAY THAT WE CAN.

23 THERE'S NOTHING ABOUT THE PARTIES TO THIS CASE OR COUNSEL
24 IN THIS CASE WITH RESPECT TO THESE HEALTH ISSUES THAT MERITS
25 SPECIAL ATTENTION.

10:35AM 1 ALL FUTURE TRIAL PARTICIPANTS IN THIS COURT AND OTHER
10:35AM 2 COURTS ARE GOING TO HAVE TO WRESTLE WITH THIS NEW POST-PANDEMIC
10:35AM 3 WORLD IN HEARINGS AND JURY TRIALS WHEN OTHER COURT PROCEEDINGS
10:36AM 4 RESUME. AGAIN, WE KNOW THE COURT WILL CONTINUE TO WORK TO
10:36AM 5 PRIORITIZE THE HEALTH AND SAFETY OF ALL OF US WHO APPEAR BEFORE
10:36AM 6 IT AS WE WORK TO ADAPT TO THAT NEW WORLD.

10:36AM 7 THERE ARE CERTAIN CIRCUMSTANCES RELATED TO THIS CASE,
10:36AM 8 HOWEVER, THAT WE THINK HEIGHTEN THE HEALTH RISK.

10:36AM 9 AS THE COURT, AND THE GOVERNMENT UNDOUBTEDLY RECOGNIZED,
10:36AM 10 THERE'S A GREATER RISK OF TRIAL DISRUPTION FROM THE VIRUS IN A
10:36AM 11 TRIAL THAT OCCURS OVER THE COURSE OF 100 DAYS THAN A TRIAL THAT
10:36AM 12 OCCURS OVER THE COURSE OF 1 OR 2. THAT FLOWS FROM BASIC MATH
10:36AM 13 AND STATISTICAL PROBABILITY.

10:36AM 14 THE CROWDS THAT WILL LIKELY GATHER OUTSIDE OF THE
10:36AM 15 COURTHOUSE IN THIS CASE AND THEN FILL THE COURTROOM, AS THEY
10:36AM 16 HAVE IN NEARLY ALL PRIOR PROCEEDINGS, ADD TO THAT HEALTH RISK.

10:37AM 17 WHAT ALL PARTIES HERE IN THE COURT I AM SURE UNDOUBTEDLY
10:37AM 18 WANT IS AS SAFE AND AS SMOOTH A TRIAL AS POSSIBLE, ONE FREE
10:37AM 19 FROM DISRUPTION.

10:37AM 20 A MISTRIAL IS A REGRETTABLE EVENT IN ANY CIRCUMSTANCES,
10:37AM 21 AND IT'S OF COURSE A MASS OF CONCERN AND A BURDEN FOR ALL
10:37AM 22 INVOLVED WHEN THAT HAPPENS IN A LENGTHY TRIAL LIKE THIS.

10:37AM 23 WE CERTAINLY DON'T THINK IT'S PRUDENT TO START A TRIAL IF
10:37AM 24 THE PUBLIC HEALTH ENVIRONMENT SUGGESTS THAT THERE'S A
10:37AM 25 SUBSTANTIALLY INCREASED RISK OF A MISTRIAL.

10:37AM 1 THIS IS WHY IN OUR DISCUSSIONS WITH THE GOVERNMENT AND IN
10:37AM 2 THE PLEADING THAT WE SAID BEFORE THE COURT AT DOCKET 372, WE
10:37AM 3 ARTICULATED OUR BELIEF EVEN BEFORE THE CONCEPT OF A SUPERSEDING
10:38AM 4 INDICTMENT WAS DISCUSSED THAT IT WOULD BE APPROPRIATE TO DELAY
10:38AM 5 THE TRIAL UNTIL EARLY NEXT YEAR.

10:38AM 6 GIVEN THAT THE GOVERNMENT WAS RELUCTANT TO DO THAT, WE OF
10:38AM 7 COURSE HAVE TRIED TO FIND A WAY WHERE WE CAN MAKE AN
10:38AM 8 ACCOMMODATION THAT WOULD ACCOUNT FOR SOME OF THE PARTICULAR
10:38AM 9 LIMITATIONS AND TRIAL PREPARATION THAT RESULTED FROM THE
10:38AM 10 CURRENT CIRCUMSTANCES.

10:38AM 11 AS THE COURT KNOWS, AND WE'VE DISCUSSED IN PRIOR CALLS,
10:38AM 12 THERE'S MUCH THAT WE CAN CONTINUE TO DO AND WE PLEDGE TO THE
10:38AM 13 COURT THAT WE ARE CONTINUING TO WORK DILIGENTLY WITH ALL TASKS
10:38AM 14 THAT WE CAN DO IN OUR CURRENT REMOTE WORKING ENVIRONMENT, BUT
10:38AM 15 OF COURSE THERE ARE MANY TASKS THAT WE CAN'T DO TO PREPARE FOR
10:38AM 16 TRIAL THAT REQUIRE ACTIVITIES THAT ARE ILL-ADVISED OR ILLEGAL
10:38AM 17 GIVEN THE CURRENT CIRCUMSTANCES AND PUBLIC HEALTH CONDITIONS.

10:39AM 18 OUR SUGGESTION INITIALLY FOR THE 90-DAY DELAY WAS DONE
10:39AM 19 WITH THE BELIEF -- TO LATE OCTOBER -- WAS DONE WITH THE BELIEF
10:39AM 20 THAT A DELAY OF THAT PERIOD WOULD HELP US ACCOUNT FOR SOME OF
10:39AM 21 THE LIMITATIONS THAT WE ARE UNDER IN THE REMOTE WORK AND
10:39AM 22 CURRENT HEALTH ENVIRONMENT. THAT'S WHY WE PROPOSED THAT
10:39AM 23 SCHEDULE.

10:39AM 24 WE RECOGNIZED WHEN WE PROPOSED THAT SCHEDULE, AND WE
10:39AM 25 BELIEVE IT'S TRUE WITH ANY SCHEDULE THAT STARTS THAT LATE, THAT

10:39AM 1 THAT COULD PUSH US INTO A SITUATION WHERE WE'RE WORKING THROUGH
10:39AM 2 THE HOLIDAYS.

10:39AM 3 WE, OF COURSE, IN NORMAL CIRCUMSTANCES WOULDN'T CONSIDER
10:39AM 4 PROPOSING SOME STEPS, BUT WE RECOGNIZE THAT WE ARE IN
10:40AM 5 EXTRAORDINARY TIMES, AND WE RECOGNIZE THAT IN TIMES SUCH AS
10:40AM 6 THAT SACRIFICES ARE NEEDED. AND ENSURING THAT OUR CLIENT HAS
10:40AM 7 AN APPROPRIATE DEFENSE, WE'RE PREPARED TO WORK THROUGH THE
10:40AM 8 HOLIDAYS AS NEEDED IF THAT'S WHAT ENDS UP HAPPENING.

10:40AM 9 NOW, OF COURSE THAT, THAT PROPOSAL CHANGED WHEN THE
10:40AM 10 GOVERNMENT INFORMED US AT THIS POINT THAT IT INTENDED TO SEEK A
10:40AM 11 SUPERSEDING INDICTMENT.

10:40AM 12 AND WHILE I APPRECIATE THAT COUNSEL FOR THE GOVERNMENT
10:40AM 13 DOESN'T BELIEVE IT WILL SIGNIFICANTLY INCREASE THEIR TRIAL
10:40AM 14 PREPARATION TIME, I WILL MAKE CLEAR TO THE COURT THAT IF THE
10:40AM 15 GRAND JURY CHOOSES TO RETURN A SUPERSEDING INDICTMENT ALONG THE
10:41AM 16 LINES MR. LEACH HAS DISCLOSED THAT HE INTENDS TO SEEK, WHILE
10:41AM 17 THE CHANGES IN LANGUAGE MAY BE LIMITED AND DESIGNED TO DO
10:41AM 18 MINIMAL VIOLENCE TO THE WORDS WITHIN THE INDICTMENT, THE
10:41AM 19 FUNDAMENTAL SCOPE OF THE INDICTMENT CHANGES SIGNIFICANTLY.

10:41AM 20 THE INDICTMENT, THE PROPOSED INDICTMENT, OR THE POTENTIAL
10:41AM 21 SUPERSEDING INDICTMENT THAT MR. LEACH HAS STATED THAT THE
10:41AM 22 GOVERNMENT INTENDS TO SEEK SIGNIFICANTLY EXPANDS THE TIME
10:41AM 23 PERIOD THAT HAS BEEN THE FOCUS OF THE CASE. THE COMPANY DURING
10:41AM 24 THE 2010 TO 2013 TIME PERIOD WAS IN A FUNDAMENTALLY DIFFERENT
10:41AM 25 STATE OF OPERATIONS THAN IT WAS DURING THE LATER TIME PERIOD

10:41AM 1 THAT WAS IDENTIFIED IN THE PREVIOUS CONSPIRACY PERIOD. THE --
10:42AM 2 ALTHOUGH THE GOVERNMENT HAS IN DRAFTING, IT APPEARS, INTENT ON
10:42AM 3 CHANGING THE DEFINITION OF INVESTORS AND THE SCOPE OF THE
10:42AM 4 INVESTOR RELATED CONSPIRACY TO INCLUDE OTHER PARTIES, IT DOES
10:42AM 5 NOT APPEAR TO US, BASED ON WHAT HAS BEEN REPRESENTED BY THE
10:42AM 6 GOVERNMENT, THAT THOSE ARE REALLY INVESTOR RELATIONSHIPS AT
10:42AM 7 ALL.

10:42AM 8 IN FACT, THOSE RELATIONSHIPS, RELATIONSHIPS LIKE THE
10:42AM 9 WALGREENS RELATIONSHIP, THE SAFEWAY RELATIONSHIP, RELATIONSHIPS
10:42AM 10 WITH BOARD OF DIRECTORS ARE FUNDAMENTALLY DIFFERENT
10:42AM 11 RELATIONSHIPS THAN INVESTOR RELATIONSHIPS.

10:42AM 12 WALGREENS, SAFEWAY ARE CONTRACTUAL COUNTERPARTIES WITH
10:42AM 13 THERANOS. THE COURSE OF DEALING BETWEEN THERANOS AND THOSE
10:42AM 14 CONTRACTUAL COUNTERPARTIES IS FUNDAMENTALLY DIFFERENT IN NATURE
10:43AM 15 AND SCOPE FROM THE INVESTOR-RELATED RELATIONSHIPS THAT WERE
10:43AM 16 OUTLINED IN THE PRIOR INDICTMENT.

10:43AM 17 THE INTERACTIONS WITH THE BOARD OF DIRECTORS ALSO
10:43AM 18 SIMILARLY ARE INTERACTIONS BETWEEN MANAGEMENT AND BOARD MEMBERS
10:43AM 19 AMONG FIDUCIARIES WITHIN THE COMPANY AND ARE OF A COMPLETELY
10:43AM 20 DIFFERENT NATURE FROM THE ALLEGATIONS THAT WERE SET FORTH IN
10:43AM 21 THE PRIOR INDICTMENT.

10:43AM 22 THEY REQUIRE A DIFFERENT LEVEL OF PREPARATION, THEY RAISE
10:43AM 23 DIFFERENT LEGAL ISSUES, WHICH WILL REQUIRE ADDITIONAL MOTIONS
10:43AM 24 SHOULD THE GRAND JURY RETURN AN INDICTMENT, AND FUNDAMENTALLY
10:43AM 25 CHANGE THE NATURE OF OUR TRIAL PREPARATION.

1 I'LL SAY WITH A BIT OF FRUSTRATION THAT I WILL CONFESS TO
2 THE COURT, ALTHOUGH MR. LEACH SUGGESTS THAT SOME OF THESE
3 CHANGES FLOW FROM THE ORDER OF THE COURT AND THE MOTIONS TO
4 DISMISS, WHICH OF COURSE WERE BRIEFED ON THE SCHEDULE THAT WAS
5 AGREED TO BY ALL PARTIES AND PRESENTED AND APPROVED BY THE
6 COURT, WHILE THOSE CHANGES MAY HAVE RESULTED WITH RESPECT TO
7 THE NEW COUNTS RELATED TO THE PATIENTS, THE ORDER OF THE COURT
8 HAS LITTLE OR NOTHING TO DO WITH THE EXPANSION OF THE
9 INVESTOR-RELATED CONSPIRACY TO INCLUDE NEW THEORIES, NEW
10 COUNTERPARTIES, NEW FIDUCIARIES, THAT HAVE LONG BEEN KNOWN TO
11 THE GOVERNMENT AND WHICH THE GOVERNMENT HAS PREVIOUSLY CHOSEN
12 NOT TO CHARGE.

13 WHY IT TOOK UNTIL THIS POINT TO ADD THOSE CHARGES TO THIS
14 CASE IS UNCLEAR TO THE DEFENSE. IT'S OF SOME FRUSTRATION GIVEN
15 ALL OF THE WORK THAT WE HAVE DONE THUS FAR.

16 AS THE COURT KNOWS, THERE ARE OVER 20 MILLION PAGES OF
17 DOCUMENTS IN THIS CASE. MANY OF THOSE DOCUMENTS HAVE BEEN
18 REVIEWED WITH THE CURRENT INDICTMENT IN MIND. MANY OF THOSE
19 DOCUMENTS WILL NOW NEED TO BE REVIEWED. MANY OF THE WITNESSES
20 WILL NEED TO BE REASSESSED. THE HUNDREDS OF WITNESS STATEMENTS
21 WILL NEED TO BE REVIEWED AND ADDRESSED WITH THE NATURE OF THESE
22 ALLEGATIONS IN MIND, AGAIN, SHOULD THE GRAND JURY CHOOSE TO
23 RETURN THIS INDICTMENT AND SHOULD THE CHARGES SURVIVE A MOTION
24 TO DISMISS.

25 THAT'S A SUBSTANTIAL AMOUNT OF WORK ABOVE AND BEYOND THE

1 WORK THAT HAS PREVIOUSLY BEEN BEFORE US IN THIS MATTER.

2 FORTUNATELY, PERHAPS MAYBE ONE OF THE FEW UNFORTUNATE
3 THINGS THAT HAS COME FROM THE CURRENT HEALTH CRISIS, WE BELIEVE
4 THAT WE CAN STILL DO THAT WITHIN THIS AMOUNT OF TIME IN ADVANCE
5 OF EARLY 2021 WHEN WE THINK IT'S SENSIBLE TO PROCEED WITH THIS
6 MATTER IN ANY EVENT.

7 BUT WE THINK THE MINIMIZATION OF THESE ALLEGATIONS BY THE
8 GOVERNMENT IS ONE WITH WHICH WE RESPECTFULLY DISAGREE AND ONE
9 THAT REQUIRES SIGNIFICANTLY ADDITIONAL TIME.

10 THERE -- IT IS TRUE THAT SOME OF THESE RELATIONSHIPS WERE
11 PREVIOUSLY ADDRESSED WITHIN THE INDICTMENT. WALGREENS, FOR
12 EXAMPLE, IS SET FORTH IN THE INDICTMENT WITH THE ALLEGATION
13 BEING THAT SOME OF THE DEALINGS WITH RESPECT TO WALGREENS WERE
14 MISREPRESENTED TO OTHER INVESTORS.

15 THE NEW ALLEGATIONS WITHIN THE INDICTMENT ARE TOTALLY
16 DIFFERENT. THERANOS IS SUGGESTING THAT WALGREENS ITSELF MAY
17 HAVE BEEN DEFRAUDED IN SOME WAY.

18 WE, OF COURSE, WILL AGGRESSIVELY CONTEST THOSE
19 ALLEGATIONS, BUT THE TYPE OF PREPARATION REQUIRED TO DO SO IS
20 FUNDAMENTALLY DIFFERENT FROM THE PREPARATION THAT WE HAVE
21 ENGAGED IN THUS FAR.

22 I'LL PAUSE THERE AND ASK IF THE COURT HAS ANY INQUIRIES,
23 I'M HAPPY TO ADDRESS THEM.

24 THE COURT: ALL RIGHT. THANK YOU, MR. WADE. THANK
25 YOU FOR OUTLINING THE CHALLENGES THAT THE DEFENSE MIGHT FACE

10:47AM 1 SHOULD THE GOVERNMENT DECIDE TO SEEK A SUPERSEDING INDICTMENT.

10:47AM 2 I'M GOING TO ASK PEOPLE TO PLEASE MUTE YOUR PHONES, PLEASE
10:47AM 3 MUTE YOU'RE PHONES.

10:47AM 4 THANK YOU, MR. WADE.

10:48AM 5 ONE OF THE THOUGHTS AND CONCERNS THAT I HAVE ABOUT THE
10:48AM 6 INFORMATION FROM THE GOVERNMENT THAT THEY MAY SEEK TO SUPERSEDE
10:48AM 7 THE INDICTMENT IS THE TIMING OF THAT. AND THIS IS AGAIN
10:48AM 8 SPECULATION, ASSUMING THAT OUR COURT IS BACK IN OPERATION, THAT
10:48AM 9 IS, THE COURTHOUSE IS OPEN MAY 1ST, IN MAY THE GOVERNMENT WOULD
10:48AM 10 THEN, I'M SURE THEY WOULD PROCEED WITH ALL HASTE TO GET THE
10:48AM 11 GRAND JURY CONVENED AND PRESENT THIS AND THEN WE WOULD HAVE A
10:48AM 12 RETURN.

10:48AM 13 I DON'T KNOW WHAT THE TIMELINE OF THAT POTENTIALLY IS, BUT
10:48AM 14 OF COURSE BASED ON MR. WADE'S COMMENTS, AND IT'S COMMON
10:48AM 15 KNOWLEDGE THAT WE WOULD EXPECT THAT ANY SUPERSEDING INDICTMENT
10:48AM 16 WOULD BE LOOKED AT BY THE DEFENSE WITH CLOSE SCRUTINY AND THEN
10:48AM 17 POTENTIAL MOTIONS TO DISMISS OR SOME OTHER MOTIONS MIGHT ARISE
10:48AM 18 FROM THAT.

10:48AM 19 YOU'VE GIVEN ME A PROPOSED SCHEDULE IN DOCUMENT 372, AND
10:48AM 20 I'M JUST CURIOUS ABOUT WHAT -- LET'S JUST ASSUME THAT A
10:49AM 21 SUPERSEDING INDICTMENT IS RECEIVED ALONG THE LINES THAT THE
10:49AM 22 GOVERNMENT HAS PROPOSED.

10:49AM 23 I WONDER FROM BOTH SIDES, CAN YOU GIVE ME YOUR THOUGHTS
10:49AM 24 ABOUT MOTION PRACTICE IN REGARDS TO THAT AND HOW THAT, THAT IS,
10:49AM 25 HOW THAT MOTION PRACTICE FITS INTO THE CURRENT PROPOSED

10:49AM 1 SCHEDULES THAT YOU'VE PRESENTED?

10:49AM 2 MR. LEACH, I'M NOT SURE YOU HAVE SUFFICIENT INFORMATION TO
10:49AM 3 ANSWER THAT QUESTION BECAUSE THE MOTION PRACTICE WOULD BE
10:49AM 4 GENERATED, OF COURSE, BY THE DEFENSE, BUT I'M HAPPY TO START
10:49AM 5 WITH YOU IF YOU HAVE SOME THOUGHTS ON THAT.

10:49AM 6 MR. LEACH: THANK YOU, YOUR HONOR.

10:49AM 7 THAT'S RIGHT, I DON'T HAVE A SENSE OF WHAT MOTIONS THEY
10:49AM 8 INTEND, AND SO I'M NOT REALLY IN A POSITION TO TALK ABOUT THE
10:49AM 9 TIMING OF THAT.

10:50AM 10 I DO THINK UNDER THE SCHEDULE PROPOSED BY THE GOVERNMENT
10:50AM 11 WE HAVE MOTIONS IN LIMINE NOT STARTING UNTIL AUGUST, AND WE
10:50AM 12 HAVE A STATUS CONFERENCE FOR JULY 13TH.

10:50AM 13 I WOULD CERTAINLY THINK THAT -- I MEAN, WE HAVE BEEN AS
10:50AM 14 TRANSPARENT ABOUT -- BY PROVIDING THE SUPERSEDING, DRAFT
10:50AM 15 SUPERSEDING INFORMATION ABOUT WHAT THE GOVERNMENT'S INTENTIONS
10:50AM 16 ARE.

10:50AM 17 I WOULD THINK THAT THE DEFENSE HAS IN MIND WHAT THEY WANT
10:50AM 18 TO DO.

10:50AM 19 I THINK IF WE HAVE A MID-JULY, LATE JULY STATUS CONFERENCE
10:50AM 20 THAT SHOULD AFFORD SUFFICIENT TIME FOR THEM TO DRAFT THE
10:50AM 21 GOVERNMENT'S RESPONSE ANYTHING THAT THEY THINK IS APPROPRIATE.
10:50AM 22 I REALLY DON'T HAVE A SENSE OF WHAT THEY HAVE IN MIND, BUT WE
10:50AM 23 WOULD BE PREPARED TO PROCEED UNDER WHATEVER SCHEDULE THE COURT
10:50AM 24 THINKS IS APPROPRIATE FOR THIS.

10:50AM 25 THE COURT: OKAY. THANK YOU.

10:51AM 1 THAT'S A THOUGHT THAT CAME TO MIND, MR. WADE -- I'LL NEXT
10:51AM 2 CALL UPON YOU -- IS IF THE GOVERNMENT PROCEEDED -- WELL,
10:51AM 3 THERE'S A LOT OF "IF'S" HERE. ASSUMING WE'RE BACK IN THE
10:51AM 4 COURTHOUSE IN MAY AND THE GOVERNMENT IS DILIGENT ABOUT
10:51AM 5 CONVENING A GRAND JURY, AND THE GRAND JURY DOES RETURN A
10:51AM 6 SUPERSEDING DOCUMENT AS THEY'VE INDICATED, AND AS THEY'VE
10:51AM 7 PROVIDED TO YOU, THE NEXT THOUGHT I HAVE REGARDING SCHEDULING
10:51AM 8 IS WHAT ARE YOUR THOUGHTS ABOUT GETTING MOTION PRACTICE AS TO
10:51AM 9 THAT SUPERSEDING DOCUMENT COMPLETED BY THE JULY, ASSUMING WE
10:51AM 10 FOLLOW A JULY, A LATE JULY STATUS CONFERENCE?

10:51AM 11 MR. WADE: YOUR HONOR, OF COURSE THE WAY THAT WE
10:51AM 12 USUALLY APPROACH A SCHEDULE IN A CASE IS TO START WITH WHEN WE
10:52AM 13 THINK BASED UPON THE INDICTMENT WHEN A TRIAL DATE -- WHEN WE
10:52AM 14 COULD BE READY FOR TRIAL AND WE TRY TO WORK BACK AND SET A
10:52AM 15 LOGICAL AND SEQUENTIAL PATH BETWEEN THAT TRIAL DATE AND TO HIT
10:52AM 16 ALL OF THESE ITEMS.

10:52AM 17 A SUPERSEDING INDICTMENT THAT IS RETURNED, IF THE GRAND
10:52AM 18 JURY RETURNS IN MAY, AND I'LL NOTE THAT I DO HAVE MATTERS IN
10:52AM 19 OTHER COURTS WHERE GRAND JURIES WERE INITIALLY EXTENDED UNTIL
10:52AM 20 MAY, BUT THAT'S NOW BEEN -- THOSE GRAND JURIES HAVE NOW BEEN
10:52AM 21 DEFERRED FURTHER INTO JULY. BUT IF IT COMES IN MAY, YOU KNOW,
10:52AM 22 WE WOULD OBVIOUSLY NEED TIME TO ADDRESS TO CONSIDER THAT.

10:52AM 23 WE'LL, OF COURSE, BASED ON THE REPRESENTATIONS OF THE
10:52AM 24 GOVERNMENT, BEGIN THINKING ABOUT WAYS IN WHICH WE MIGHT
10:52AM 25 APPROACH SUCH CHARGES IF THE GRAND JURY DECIDES TO CONVENE THEM

10:53AM 1 OR TO RETURN THEM.

10:53AM 2 BUT THERE ARE A NUMBER OF OTHER, YOU KNOW, RELATED ISSUES
10:53AM 3 THAT COME INTO THE CASE AS A RESULT OF THAT ACTIVITY THAT WOULD
10:53AM 4 ALSO NEED TO BE ACCOMMODATED IN THE SCHEDULE.

10:53AM 5 THERE'S A POTENTIAL NEED FOR SUBSTANTIAL ADDITIONAL WORK
10:53AM 6 THAT WOULD BE REQUIRED BY THE DEFENSE BASED ON INFORMATION
10:53AM 7 PROVIDED TO THE GOVERNMENT AS TO WHAT THEY MIGHT SEEK. WE
10:53AM 8 BELIEVE WE MAY NEED TO RETAIN AN EXPERT OR MORE GIVEN THE
10:53AM 9 NATURE OF SOME OF THE ALLEGATIONS.

10:53AM 10 MANY OF THE PEOPLE WHO THE GOVERNMENT HAS IDENTIFIED, MANY
10:53AM 11 OF THE WITNESSES WHO HAVE BEEN IDENTIFIED WHO WOULD BE
10:53AM 12 IMPLICATED BY AN INDICTMENT OF THIS TYPE WE HAVE NOT
10:53AM 13 SUBPOENAED, WE HAVE NOT SOUGHT DOCUMENTS, WE HAVE NOT DONE WHAT
10:54AM 14 WE WOULD DO IN AN ORDINARY COURSE IF THESE ALLEGATIONS WERE IN
10:54AM 15 THE INDICTMENT.

10:54AM 16 SO OF COURSE NOW IT'S NOT PRUDENT GIVEN HEALTH CONDITIONS
10:54AM 17 TO PROCEED WITH SOME OF THOSE SUBPOENAS UNLESS PEOPLE WERE TO
10:54AM 18 ACCEPT THEM VOLUNTARILY.

10:54AM 19 SO THERE ARE A NUMBER OF THINGS THAT NEED TO HAPPEN. I
10:54AM 20 THINK WE UNDOUBTEDLY COULD TRY TO MEET AND CONFER WITH THE
10:54AM 21 GOVERNMENT AND WOULD IN ANY COURSE ONCE WE DETERMINE A
10:54AM 22 REASONABLE TRIAL DATE TO TRY TO SET A SENSIBLE SCHEDULE, BUT I
10:54AM 23 THINK TRYING TO INJECT THIS INTO THESE ALREADY DIFFICULT
10:54AM 24 CIRCUMSTANCES WOULD NECESSITATE A DELAY IN THE VIEW OF THE
10:54AM 25 DEFENSE.

(PAUSE IN PROCEEDINGS.)

MR. WADE: IS THE COURT STILL THERE?

THE COURT: I AM STILL HERE, BUT YOU KNOW WHAT, I DID NOT HAVE THE GOOD SENSE TO UNMUTE MY PHONE.

THANK YOU. SO THANK YOU, MR. WADE. THANK YOU FOR THAT.

WHAT I HEAR YOU SAYING IS THAT SHOULD THE GOVERNMENT PROCEED AND SECURE A SUPERSEDING INDICTMENT ALONG THE LINES OF THE PROPOSED DRAFT THAT THEY HAVE PROVIDED YOU, IT WOULD CHANGE THE COMPLEXION OF YOUR -- OBVIOUSLY OF WHAT YOU NEED TO DO. YOU WOULD LOOK AT THE CASE AND DETERMINE WHETHER YOU CAN GO FORWARD WITH FILING MOTIONS, YOUR MOTIONS PRIOR TO THE JULY DATE AND THE STATUS DATE THAT WE HAVE.

THAT'S WHAT I'M TRYING TO SEE IF WE CAN, IF WE CAN GET MOTION PRACTICE SCHEDULED AND HEARD BY THAT DATE, THAT WOULD BE IDEAL AT LEAST FOR MOVING FORWARD.

I WAS PROBING TO SEE IF THAT -- OF COURSE YOU CAN'T PREDICT ANYTHING AND YOU DON'T HAVE BENEFIT OF ANYTHING IN FRONT OF YOU. I DON'T KNOW IF THAT'S SOMETHING THAT WE CAN DO.

MR. WADE: YEAH. MY APOLOGIES. IT'S DIFFICULT SOMETIMES TO NOT INTERRUPT THE COURT IN THIS FORUM. SO MY APOLOGIES TO THE COURT.

THE COURT: NO, NO, NOT AT ALL.

MR. WADE: THE -- WE, OF COURSE, WOULD WORK TO PROCEED WITH MOTIONS DIRECTED AT ANY NEW INDICTMENT AS QUICKLY AS WE POSSIBLY COULD, YOUR HONOR, JUST TO BE CLEAR.

10:57AM 1 MY OTHER COMMENTS ARE JUST DIRECTED -- AND TO THE EXTENT
10:57AM 2 THAT AN INDICTMENT WAS RETURNED, YOU KNOW, REASONABLY IN
10:57AM 3 ADVANCE OF THE JULY STATUS CONFERENCE, WE WOULD CERTAINLY
10:57AM 4 ENDEAVOR TO TRY TO FIT BRIEFING IN IN ADVANCE OF THAT.

10:57AM 5 MY OTHER COMMENTS WERE MERELY DIRECTED -- MEANT TO DIRECT
10:57AM 6 THE COURT'S ATTENTION TO THE FACT THAT THERE IS OBVIOUSLY MUCH
10:57AM 7 MORE THAT IS NEEDED HERE BEYOND JUST THE BRIEFING ON THE MOTION
10:57AM 8 TO DISMISS.

10:57AM 9 THE COURT: SURE. THANK YOU.

10:57AM 10 ALL RIGHT. THANK YOU. LET ME ASK, MR. LEACH, ANYTHING
10:57AM 11 YOU WOULD LIKE TO SAY ABOUT THE SCHEDULING ISSUE REGARDING THE
10:57AM 12 MOTIONS AND THE SUPERSEDING INDICTMENT?

10:57AM 13 MR. LEACH: NO, YOUR HONOR. JUST THAT I
10:57AM 14 FUNDAMENTALLY DISAGREE THAT THIS IS A SEA CHANGE. THIS IS THE
10:57AM 15 SAME THEORY AND THE SAME CASE WITH DISCOVERY THAT THEY'VE HAD
10:58AM 16 FOR THE BETTER PART OF A YEAR AND A HALF.

10:58AM 17 THE DEFENSE IS IN A MUCH BETTER POSITION TO DESCRIBE ITS
10:58AM 18 PREPARATION THAN WE ARE, BUT WE FUNDAMENTALLY JUST DO NOT SEE
10:58AM 19 THIS AS THE SEA CHANGE THAT IS DESCRIBED. AND -- BUT BEYOND
10:58AM 20 THAT, I HAVE NOTHING FURTHER.

10:58AM 21 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:58AM 22 MR. WADE, ANYTHING ELSE YOU WOULD LIKE TO ADD?

10:58AM 23 MR. WADE: NO, YOUR HONOR.

10:58AM 24 THE COURT: ALL RIGHT. WELL, THANK YOU VERY MUCH.

10:58AM 25 THE STATUS HEARING TODAY WAS SCHEDULED TO DETERMINE WHAT

1 WE SHOULD DO GOING FORWARD IN LIGHT OF THE COVID CRISIS THAT
2 THE NATION FACES AND IN LIGHT OF THE LIMITATIONS THAT THAT
3 BRINGS TO THIS COURT TO PROVIDE SAFE ENVIRONMENTS FOR ALL
4 PARTIES TO THE CASE AS WELL AS THE PUBLIC AND ALL OF OUR COURT
5 PERSONNEL AS WELL.

6 WE HAVE, AS I THINK SOMEONE SAID, WE'RE IN UNCHARTERED
7 WATERS NOW AND TERRITORY NOW IN REGARDS TO HOW TO MANAGE OUR
8 CALENDARS. WE KNOW THAT THE PRIME DIRECTIVE IS TO ENSURE THAT
9 ALL PARTIES RECEIVE FAIR TREATMENT IN THE COURTS, BUT THE REAL
10 PRIME DIRECTIVE NOW ADDENDUM TO THAT IS TO PROCEED WITH CAUTION
11 AND SAFETY TO MAKE SURE THAT EVERYONE WHO ENTERS OUR COURTS ARE
12 SAFE, FIRST OF ALL. THAT WE OPEN OUR COURTS, WHEN WE OPEN OUR
13 COURTS, THAT THEY ARE IN A SAFE ENVIRONMENT FOR ALL, ALL
14 CONCERNED, INCLUDING THE PUBLIC, THE PUBLIC WHO WE WOULD CALL
15 AS JURORS TO SIT IN THE MATTER. AND WE WANT TO MAKE SURE THAT
16 THE JURORS HAVE CONFIDENCE THAT THE COURTROOMS THAT THEY'RE
17 SITTING IN --

18 THE CLERK: EXCUSE ME, YOUR HONOR. I BELIEVE
19 SOMEONE NEEDS TO MUTE THEIR PHONE. THERE'S INTERRUPTION GOING
20 ON. IF YOU COULD PLEASE MUTE YOUR PHONE.

21 THE COURT: YES, YES. PLEASE MUTE YOUR PHONES,
22 PLEASE. THANK YOU.

23 THE CLERK: SORRY, YOUR HONOR.

24 THE COURT: THANK YOU. THANK YOU, MS. KRATZMANN.

25 WE NEED TO MAKE SURE THE ENVIRONMENT IS SAFE FOR ALL

11:00AM 1 PARTIES, WE NEED TO ENSURE TO OUR JURORS, THE PUBLIC THAT WE
11:00AM 2 CALL, THE COMMUNITY THAT IS CALLED TO HEAR MATTERS, THAT THE
11:00AM 3 COURT CAN ENSURE THEIR SAFETY SUCH THAT THEY HAVE CONFIDENCE IN
11:00AM 4 THEIR JUSTICE SYSTEM AND THEY HAVE CONFIDENCE THAT THEY CAN
11:00AM 5 FOCUS ON THE ISSUES BEFORE THEM IN A TRIAL SUCH THAT THEY CAN
11:00AM 6 PROVIDE A FAIR HEARING FOR ALL SIDES. THAT'S A CRITICAL
11:00AM 7 COMPONENT OF THE WORK THAT THEY DO AND WHAT WE WANT TO ENSURE
11:00AM 8 TO THE JURY IN THIS CASE.

11:00AM 9 I DO THINK THAT LOOKING AT OUR SCHEDULE AND THIS COURT HAS
11:00AM 10 BEEN, AND I KNOW COUNSEL HAVE CALLED ME ON IT, IS I'VE BEEN A
11:01AM 11 LITTLE AGGRESSIVE ABOUT THE TRIAL SCHEDULE ON THIS. I DO THINK
11:01AM 12 THAT THE SCHEDULE FOR JULY AS I INITIALLY PROPOSED IS NOT
11:01AM 13 REALISTIC NOW GIVEN THE CIRCUMSTANCES THAT WE FACE. I JUST
11:01AM 14 DON'T THINK THAT THAT'S A REALITY.

11:01AM 15 I'D LIKE TO THINK THAT, AND I HOPE THAT TRIAL IN OCTOBER
11:01AM 16 OF THIS YEAR IS SOMETHING THAT WE COULD, WE COULD ENGAGE. I
11:01AM 17 KNOW EVERY DAY THE NEWS CHANGES ABOUT COVID AND ABOUT WHETHER
11:01AM 18 OR NOT THINGS WILL BEGIN TO REACH NORMALITY AND THAT DOESN'T
11:01AM 19 MEAN THAT WE'LL HAVE ANY NORMAL SENSE OF OUR SOCIETY IN
11:01AM 20 OCTOBER. WE HOPE WE DO, BUT SHELTER IN PLACE REMAINS AND IN
11:01AM 21 MANY STATES, AND CERTAINLY IN THE ENVIRONMENT AND JURISDICTION
11:01AM 22 OF THE COURTHOUSE.

11:01AM 23 I'D LIKE TO -- WHAT I'D LIKE TO DO IS LOOK AT THE OCTOBER
11:02AM 24 DATE, THE LATER OCTOBER DATE THAT WAS PROPOSED AS A POTENTIAL
11:02AM 25 TRIAL DATE, AND I THINK IT WISE, AND I'M GRATEFUL TO BOTH SIDES

11:02AM 1 HERE, TO SUGGEST THAT WE HAVE AN INTERIM STATUS CONFERENCE IN
11:02AM 2 JULY AT LEAST CALENDARED. THAT'S NOT TO SAY THAT WE WON'T
11:02AM 3 ADVANCE THAT IF NEEDED, BUT AT LEAST CALENDARED IN JULY SO WE
11:02AM 4 CAN LOOK FORWARD AND SEE WHAT AND HOW BEST WE CAN FORECAST
11:02AM 5 WHETHER OR NOT THE OCTOBER DATE IS A REALITY OR WHETHER OR NOT
11:02AM 6 IT MAKES MORE SENSE TO LOOK BEYOND THE FALL AND INTO THE NEW
11:02AM 7 YEAR, EARLY NEW YEAR.

11:02AM 8 WHAT I THINK WE HAVE ALL READ AND FROM EXPERTS, AND THERE
11:02AM 9 ARE MANY OF THEM ON THIS CRISIS THAT WE FACE, THE INFORMATION
11:02AM 10 AT LEAST THAT THE COURT HAS READ AND SOME OF IT HAS INDICATED
11:02AM 11 THAT LIKE THE NORMAL FLU VIRUS THAT SEEMS TO COME AROUND IN THE
11:03AM 12 WINTER AND FALL, THERE'S AN EXPECTATION THAT THIS COVID MAY
11:03AM 13 RETURN IN THE FALL IN SOME MANNER AND WE SHOULD BE COGNIZANT OF
11:03AM 14 THAT.

11:03AM 15 WE'RE SO GRATEFUL FOR OUR HEALTH CARE PROFESSIONALS AND
11:03AM 16 ALL OF THOSE SCIENTISTS AND BIOENGINEERS WHO ARE WORKING
11:03AM 17 DILIGENTLY TO TRY AND TO FIND SOME TYPE OF SERUM THAT CAN
11:03AM 18 PROTECT ALL OF US, A VACCINE THAT CAN PROTECT ALL OF US FROM
11:03AM 19 THIS DISEASE.

11:03AM 20 BUT WE ALL KNOW THAT TAKES TIME, IT DOES TAKE TIME.

11:03AM 21 WE DON'T KNOW -- WE CAN'T FORECAST WHAT THE HEALTH
11:03AM 22 CONDITIONS OF THIS COUNTRY WILL BE IN RELATION TO COVID. WE
11:03AM 23 ALL, WE JUST ARE IN DESPAIR WHEN WE READ ABOUT THE LOSS THAT
11:03AM 24 THIS COVID HAS CAUSED ACROSS THE COUNTRY. WE REALLY ARE -- OUR
11:04AM 25 HEARTS ARE IN PAIN WHEN WE READ ABOUT NEW YORK, DETROIT, AND

11:04AM 1 OTHER CITIES, LOUISIANA, AND OTHER CITIES. SO WE'RE MINDFUL OF
11:04AM 2 THAT. AND THAT PRESSES UPON ALL OF US AS WE LOOK FORWARD TO
11:04AM 3 WHAT WE CAN DO WITH OUR CASE.

11:04AM 4 SO LET ME SAY WHAT I THINK WHAT I'D LIKE TO DO IS TO SET A
11:04AM 5 DATE FOR TRIAL, RESCHEDULE THE TRIAL DATE TO THE OCTOBER 26TH
11:04AM 6 DATE. I HAVE YOUR SCHEDULE IN DOCUMENT 372. I DO THINK THAT
11:04AM 7 WE SHOULD MAKE SOME CHANGES TO THAT SCHEDULE GOING FORWARD.

11:04AM 8 FOLKS, IF YOU HAVE YOUR SCHEDULES IN FRONT OF YOU, I'D
11:04AM 9 LIKE TO GO DOWN SOME OF THE DATES AND DEADLINES AND EVENTS THAT
11:04AM 10 YOU HAVE AND SUGGEST SOME CHANGES TO THAT.

11:05AM 11 THE CLERK: YOUR HONOR, MAY I JUST INTERJECT A
11:05AM 12 MOMENT?

11:05AM 13 THE COURT: YES. YES.

11:05AM 14 THE CLERK: THIS IS ADRIANA. COULD WE SET THE
11:05AM 15 OCTOBER DATE TO OCTOBER 27TH DATE TO TUESDAY?

11:05AM 16 THE COURT: YES, YES. OCTOBER 27TH AT 9:00 A.M. FOR
11:05AM 17 JURY SELECTION.

11:05AM 18 GOING DOWN. THIS IS FOUND ON PAGES 4 AND 5 OF 372. I DO
11:05AM 19 NOTE THAT LET'S START THAT THERE'S AGREEMENT ON THE FIRST
11:05AM 20 SERVICE OF THE SUMMARY PURSUANT TO RULE 16, AND I'M NOT GOING
11:05AM 21 TO DISTURB THAT AT THIS POINT. WE MAY HAVE SOME OTHER COMMENT
11:05AM 22 ON THAT IN A MOMENT.

11:06AM 23 THE GOVERNMENT IN IT'S RULE 16(A) DISCLOSURES WHICH BEGINS
11:06AM 24 ON LINE 26, I THINK THE DATE, WHAT I'D LIKE TO DO IS TO ADOPT
11:06AM 25 THE GOVERNMENT DATE ON THAT.

11:06AM 1 I'M LOOKING IN THAT BOX, AND PERHAPS YOU CAN HELP ME,
11:06AM 2 COUNSEL, LINE 27 AND 28 IT INDICATES THE GOVERNMENT SERVE
11:06AM 3 WITNESSES AND EXHIBITS LISTS FOR CASE-IN-CHIEF.

11:06AM 4 WAS THAT THE SAME PROPOSED DATE?

11:06AM 5 MR. LEACH: YEAH, THAT WAS INTENDED TO BE JUNE 26TH,
11:06AM 6 2020.

11:06AM 7 THE COURT: OKAY. AS WELL AS PAGE 5 BEGINNING AT
11:06AM 8 LINE 1, THE 801 --

11:06AM 9 MR. LEACH: YES.

11:06AM 10 THE COURT: OKAY. THANK YOU.

11:06AM 11 THEN ALSO ON THE RULE 16B DISCLOSURES ON LINE 3 I'LL ADOPT
11:06AM 12 THE GOVERNMENT'S DATE TO THE LATER DATE OF JULY 6TH ON THAT.

11:06AM 13 THE NEXT BOX, WHICH APPEARS ON LINE 4 THROUGH 6, I'M GOING
11:07AM 14 TO DEFER THAT FOR NOW.

11:07AM 15 ACTUALLY, THE FIRST BOX THAT I TALKED ABOUT, I'M SORRY TO
11:07AM 16 GO BACK, ON PAGE 4, LINE 23, I'M GOING TO DEFER THAT AS WELL
11:07AM 17 FOR NOW.

11:07AM 18 RETURNING TO PAGE 5, NOW WE'RE AT LINE 6 THROUGH 8, THE
11:07AM 19 DEFENSE SERVICE OF WITNESS AND EXHIBIT LISTS, I'M GOING TO
11:07AM 20 ADJUST THAT DATE TO JULY 24TH.

11:07AM 21 AND THEN THE STATUS CONFERENCE WILL BE SET FOR,
11:07AM 22 MS. KRATZMANN, JULY 20TH, JULY 20TH, AT 10:00 A.M.

11:07AM 23 NOW, AT THAT TIME ON JULY 20TH, WE WILL HAVE A BETTER IDEA
11:08AM 24 AS TO WHETHER WE'RE GOING TO GO FORWARD WITH THE OCTOBER TRIAL
11:08AM 25 DATE OR WHETHER WE NEED TO ADJUST THE SCHEDULE IN SOME OTHER

11:08AM 1 MANNER.

11:08AM 2 I'M NOT GOING TO -- AT THIS TIME I'M NOT GOING TO
11:08AM 3 ADOPT ANY OF THE OTHER -- YOU HAVE OTHER DATES THAT BEGIN IN
11:08AM 4 AUGUST AND OTHERS AND MOTIONS IN LIMINES AND THOSE DATES. I'D
11:08AM 5 LIKE TO DEFER THOSE DATES. I THINK WE CAN WAIT UNTIL THE
11:08AM 6 JULY 20TH DATE TO SEE WHETHER OR NOT AND HOW WE'RE GOING TO
11:08AM 7 PROCEED AND GO FORWARD THERE.

11:08AM 8 SO I'D LIKE YOU TO -- OBVIOUSLY YOU'RE GOING TO PREPARE
11:08AM 9 THE CASE AS BEST YOU CAN, I KNOW THAT, BUT I DON'T THINK YOU
11:08AM 10 NEED TO PAY ATTENTION TO THOSE ITEMS THAT APPEAR FROM LINES 10
11:08AM 11 DOWN TO 19 AT THIS POINT. I'D LIKE YOU TO FOCUS YOUR EFFORTS,
11:08AM 12 OF COURSE, ON THE OTHER WORK THAT YOU NEED TO DO, AND WE CAN
11:08AM 13 LOOK AT THOSE REMAINING ISSUES, THE IN LIMINE AND OTHER ISSUES,
11:09AM 14 ON THE JULY 20TH STATUS CONFERENCE DATE.

11:09AM 15 ANY QUESTIONS FROM EITHER SIDE ABOUT THIS ADJUSTMENT?

11:09AM 16 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.
11:09AM 17 THAT'S CLEAR TO US. THANK YOU.

11:09AM 18 THE COURT: MR. WADE?

11:09AM 19 MR. WADE: NO, YOUR HONOR. I TAKE IT AS WE GET
11:09AM 20 CLOSER TO THESE EVENTS WE'LL PERHAPS HAVE COMMUNICATION THROUGH
11:09AM 21 MS. KRATZMANN AS TO WHETHER THESE PROCEEDINGS WILL BE
11:09AM 22 TELEPHONIC OR IN PERSON?

11:09AM 23 OBVIOUSLY, I THINK WE ALL HOPE WE'RE IN A SITUATION WHERE
11:09AM 24 THEY'RE IN PERSON, BUT WE WILL SEE WHAT IS PRUDENT AT THAT
11:09AM 25 TIME.

11:09AM 1 THE COURT: YES. THANK YOU, MR. WADE.

11:09AM 2 I'M HOPEFUL THAT WE CAN, THAT THINGS CHANGE IN OUR COUNTRY
11:09AM 3 AND IN OUR REGIONS THAT WE COULD HAVE IN-PERSON MEETINGS.

11:09AM 4 AGAIN, I'LL JUST SAY I ALWAYS ENJOY ALL OF YOU IN THE
11:10AM 5 COURTROOM. YOU'RE ALL PROFESSIONAL, AND I APPRECIATE THAT. I
11:10AM 6 KNOW THAT YOU'RE TRIAL LAWYERS AND THE PLACE YOU WORK IS THE
11:10AM 7 COURTROOM, NOT YOUR LIVING ROOMS, KITCHENS, OR HOME OFFICES,
11:10AM 8 WHICH OF COURSE YOU DO THAT IN THE EVENINGS AND INTO THE WEE
11:10AM 9 HOURS OF THE NIGHT, I RECOGNIZE THAT.

11:10AM 10 BUT THE PLACE YOU DO YOUR BUSINESS IS IN THE COURTROOM,
11:10AM 11 AND ALL OF YOU HAVE GREAT FLUENCY FOR THE COURTROOM, AND SO I
11:10AM 12 AGREE. I HOPE THAT WE CAN OPEN OUR COURTROOMS SOON, AND WE ALL
11:10AM 13 CAN ENJOY EACH OTHER'S COMPANY.

11:10AM 14 WE'RE WORKING ON WHAT WE NEED TO DO TO ESTABLISH VIDEO
11:10AM 15 CONFERENCING IN THE INTERIM, AND SO IF WE NEED IT, HOPEFULLY
11:10AM 16 WE'LL HAVE SOMETHING SET UP FOR FUTURE STATUS CONFERENCES IF WE
11:10AM 17 CAN.

11:10AM 18 ALSO, AS TO ANY OTHER MATTERS, AS YOU POINT OUT, MR. WADE,
11:10AM 19 MS. KRATZMANN WILL BE ABLE TO COMMUNICATE ANY OTHER SCHEDULE
11:11AM 20 CHANGES FOR ANY OTHER MATTERS AS THEY NEED TO COME UP, AND I
11:11AM 21 DON'T KNOW IF THAT ANSWERS YOUR QUESTION. I HOPE IT DOES.

11:11AM 22 MR. WADE: IT DOES. THANK YOU, YOUR HONOR.

11:11AM 23 THE COURT: ALL RIGHT. ANYTHING ELSE THAT EITHER
11:11AM 24 SIDE WISHES TO RAISE AT THIS TIME?

11:11AM 25 MR. LEACH, ANYTHING FROM THE GOVERNMENT'S TEAM?

11:11AM 1 MR. LEACH: YOUR HONOR, IN LIGHT OF THE CHANGE OF
11:11AM 2 THE TRIAL DATE FROM OCTOBER -- WELL, FROM THE END OF JULY TO
11:11AM 3 OCTOBER 27TH, 2020, I THINK IT WOULD BE APPROPRIATE FOR THE
11:11AM 4 COURT TO EXCLUDE TIME FOR EFFECTIVE PREPARATION IN LIGHT OF THE
11:11AM 5 COVID CRISIS AND EVERYTHING THAT MR. WADE HAS DESCRIBED.

11:11AM 6 THE COURT: THANK YOU. I WAS GOING TO TURN TO
11:11AM 7 MR. WADE WHEN HIS COMMENTS -- DURING HIS COMMENTS AND ASK HIM
11:11AM 8 IF HE AGREES THAT TIME SHOULD BE EXCLUDED FOR EFFECTIVE
11:11AM 9 PREPARATION OF COUNSEL TO THE NEW TRIAL OF OCTOBER 26TH, 2020.

11:12AM 10 MR. WADE?

11:12AM 11 MR. WADE: YOUR HONOR, WE DO. I BELIEVE IT ALSO MAY
11:12AM 12 BE COVERED BY ONE OF THE COURT'S GENERAL ORDERS AS WELL, BUT IN
11:12AM 13 ANY EVENT, WE DO AGREE.

11:12AM 14 THE COURT: ALL RIGHT. THANK YOU THEN.

11:12AM 15 ANYTHING FURTHER FROM YOU, MR. WADE, AND YOUR TEAM?

11:12AM 16 MR. WADE: NOT AT THIS TIME, YOUR HONOR. THANK YOU.

11:12AM 17 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. THANK
11:12AM 18 YOU ALL FOR YOUR ATTENTION HERE. WE WILL -- AND LET ME SAY, IF
11:12AM 19 EITHER PARTY WISHES TO HAVE ANOTHER STATUS OR A STATUS
11:12AM 20 CONFERENCE OR BRING ANYTHING TO THE COURT'S ATTENTION, PLEASE
11:12AM 21 FEEL FREE TO DO SO.

11:12AM 22 I'VE SET THE JULY 20TH DATE AS THE CALENDARED STATUS DATE
11:12AM 23 SO WE ALL HAVE AN EVENT HORIZON TO FOCUS ON. BUT SHOULD THE
11:12AM 24 NEED ARISE OR A CHANGE OR SOMETHING HAPPENS, PLEASE CONTACT
11:12AM 25 MS. KRATZMANN, AND WE WILL OF COURSE ENGAGE THE STATUS OR OTHER

11:12AM 1 HEARING AS NEEDED IF THE PARTIES REQUIRE.

11:12AM 2 ALL RIGHT. THANK YOU. LET ME THANK YOU ALL AGAIN. IT'S

11:12AM 3 GOOD TO HEAR YOUR VOICES. I LOOK FORWARD TO THE OPPORTUNITY

11:13AM 4 WHEN I CAN SEE YOUR FACES PERSONALLY AND WE CAN INVITE YOU BACK

11:13AM 5 TO A SAFE COURTROOM AND I CAN ENJOY YOUR COMPANY AND ALL OF

11:13AM 6 YOUR ASSISTANCE IN THIS INTERESTING CASE.

11:13AM 7 PLEASE BE SAFE, YOU AND YOUR FAMILIES. I WISH YOU THE

11:13AM 8 BEST AND PLEASE BE SAFE AND WELL, AND WE'LL TALK AGAIN SOON.

11:13AM 9 ANYTHING FURTHER, MS. KRATZMANN?

11:13AM 10 THE CLERK: NO, YOUR HONOR. THANK YOU.

11:13AM 11 THE COURT: ALL RIGHT. THANK YOU. WE'LL DISENGAGE

11:13AM 12 THE LINE NOW. THANK YOU, COUNSEL.

11:13AM 13 MR. WADE: THANK YOU, YOUR HONOR.

11:13AM 14 MR. LEACH: THANK YOU VERY MUCH, YOUR HONOR.

11:13AM 15 (TELEPHONIC COURT CONCLUDED AT 11:13 A.M.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JULY 20, 2020